

**FILED** *alt*

**MOTION UNDER 28 U.S.C. SECTION 2255  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

APR 29 2008 *new*  
*Apr 29 2008*  
**MICHAEL W. DOBBINS**  
CLERK, U.S. DISTRICT COURT

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY  
A PERSON IN FEDERAL CUSTODY

UNITED STATES

v.

Vincent John Tenuto 18831-424 )  
(Full name and prison number of )  
movant) )

**08CV2447  
JUDGE HIBBLER  
MAG. JUDGE MASON**

**IF THE MOVANT HAS A SENTENCE TO BE SERVED IN THE FUTURE UNDER  
A FEDERAL JUDGMENT WHICH HE WISHES TO ATTACK, HE SHOULD FILE  
A MOTION IN THE FEDERAL COURT WHICH ENTERED THE JUDGMENT.**

1. Place of detention, or if on parole, date of parole release  
Federal Satellite Low Elkton, Lisbon, Ohio 44432.
2. Name and location of court which sentence was imposed and name  
of judge who imposed the sentence which is now under attack.  
United States District Court for the Northern District of  
Illinois, Eastern Division; Everett McKinley Dirksen United  
States Courthouse, 219 South Dearborn Street, Chicago, IL

60604

3. Date of judgment of conviction: May 2, 2007
4. Case number: 06-CR-484-1
5. Length of sentence: 96 months
6. Nature of offense involved (all counts): (1) two counts of transporting child pornography (18 U.S.C. § 2252A(a)(1); and (2) receiving child pornography (18 U.S.C. § 2252A(a)(2)(A) (Only convicted on one count of distribution)
7. What was your plea? (check one)
- (A) Not guilty ( )
- (B) Guilty ( ☒ )
- (C) Nolo Contendere ( )
8. Kind of trial: (check one)
- (A) Jury ( )
- (B) Judge only ( )
9. Did you testify at the trial?
- Yes ( ) No ( ☒ )
10. Did you appeal from the judgment of conviction?
- Yes ( ) No ( ☒ )
11. If you did appeal, answer the following:
- (A) Name of court \_\_\_\_\_
- (B) Result \_\_\_\_\_
- (C) Date of result \_\_\_\_\_
12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ( )

No ( ☒ )

If your answer to (12) was "YES," give the following information:

(A) (1) Name of court\_\_\_\_\_

(2) Nature of proceeding\_\_\_\_\_

(3) Grounds Raised\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition,  
application or motion?

Yes ( )

No ( )

(5) Result\_\_\_\_\_

(6) Date of result\_\_\_\_\_

(B) As to any second petition, application or motion, give the  
same information:

(1) Name of the court\_\_\_\_\_

(2) Nature of proceeding\_\_\_\_\_

(3) Grounds Raised\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition,  
application or motion?

Yes ( )

No ( )

(5) Result\_\_\_\_\_

(6) Date of result\_\_\_\_\_

(C) As to any third petition, application or motion, give the same  
information:

(1) Name of the court\_\_\_\_\_

(2) Nature of proceeding\_\_\_\_\_

(3) Grounds Raised\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ( ) No ( )

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(D) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ( ) No ( )

(2) Second petition, etc. Yes ( ) No ( )

(3) Third petition, etc. Yes ( ) No ( )

(E) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

**CAUTION: IF YOU FAIL TO SET FORTH ALL GROUNDS IN THIS MOTION, YOU MAY BE BARRED FROM PRESENTING ADDITIONAL GROUNDS AT A LATER DATE.**

- A. Ground one I received ineffective assistance of counsel on appeal when my attorney knew I wanted to appeal and raise a sentencing issue, did not file a notice of appeal, and told me I had to find another attorney for appeal.

Supporting FACTS (tell your story briefly without citing cases or law):

After I was sentenced, I informed Mr. Donlevy that I was interested in appealing my sentence on specific grounds. Mr. Donlevy advised against it. I still wanted to appeal. Instead of appealing, and even though he was my paid attorney, Mr. Donlevy told me to find another attorney to file an appeal. Mr. Donlevy told me the date when to file the appeal when I only had two or three days left to get a brand new attorney and file the appeal.

- B. Ground two I received ineffective assistance of counsel when my attorney failed to present all the important and relevant information in support of the request for a lower sentence.

Supporting FACTS (tell your story briefly without citing cases or law):

My family and I told Mr. Donlevy many facts to use for requesting a lower sentence. Many of those facts Mr. Donlevy did not mention. If all the facts were known, Judge Hibbler may have decreased my sentence even further.

- C. Ground three I would like an evidentiary hearing if the Court believes material facts are in dispute about my wish for an appeal, or Mr. Donlevy's advice to get a new attorney, or the

additional facts not introduced in favor of a shorter sentence.

Supporting FACTS (tell your story briefly without citing cases or law):

D. Ground four

Supporting FACTS (tell your story briefly without citing cases or law:

15. If any of the grounds listed in 14 A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

I wanted to present claims on appeal, but Mr. Donlevy did not appeal and I did not have time to hire another attorney to appeal when Mr. Donlevy refused to act. This is my first chance to bring claims since then.

16. Do you have any petition or appeal now pending in any court as to the judgment under attack? Yes ( ) No ( ☒ )

(A) If "YES," state the name of the court and the nature of the proceeding: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(A) At preliminary hearing Christina Louise Farley, 55 East Monroe Street, Suite 2800, Chicago, IL 60603  
\_\_\_\_\_  
\_\_\_\_\_

(B) At arraignment and plea Christina Louise Farley and John Bickley, 325 West Washinton Street, Suite 401, Waukegan, Illinois 60085  
\_\_\_\_\_  
\_\_\_\_\_

(C) At trial N/A  
\_\_\_\_\_  
\_\_\_\_\_

(D) At sentencing John D. Donlevy, 30 North LaSalle Street, Suite 2140, Chicago, IL 60602  
\_\_\_\_\_  
\_\_\_\_\_

(E) On appeal John D. Donlevy represented me at the time a notice of appeal should have been filed.  
\_\_\_\_\_  
\_\_\_\_\_

(F) In any post-conviction proceeding No previous post-conviction proceedings  
\_\_\_\_\_

(G) On appeal from any adverse ruling in a post-conviction proceeding N/A

18. Were you sentenced on more than one count of an indictment, or more than one indictment, in the same court and at approximately the same time? Yes ( ) No ( ☒ )

19. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ( ) No ( ☒ )

(A) If so, give the name and location of the court which imposed the sentence to be served in the future: \_\_\_\_\_

(B) And give the date and length of sentence to be served in the future: \_\_\_\_\_

WHEREFORE, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of attorney (if any)

  
\_\_\_\_\_  
Signature of Movant

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4-24-08  
(date)

  
\_\_\_\_\_  
Signature of Movant